(13)

No. 91-636

IN THE

Supreme Court of the United States

OCTOBER TERM, 1991

FORT GRATIOT SANITARY LANDFILL, INC.,
Petitioner,

Vs.

MICHIGAN DEPARTMENT OF NATURAL RESOURCES, *et al.*,
Respondent(s).

On Writ of Certiorari to the United States
Court of Appeals for the Sixth Circuit

AMICUS BRIEF IN SUPPORT OF RESPONDENTS

AMICUS BRIEF OF THE STATES OF PENNSYLVANIA, GEORGIA, IDAHO, ILLINOIS, MONTANA, NEBRASKA, NEVADA, NORTH DAKOTA, OHIO, SOUTH CAROLINA, SOUTH DAKOTA, TENNESSEE, WEST VIRGINIA, WYOMING

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EDITOR'S NOTE

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STATEMENT OF THE INTEREST OF THE *AMICI CURIAE*

St. Clair County, Michigan, adopted a Solid Waste Management Plan for the management of non-hazardous wastes generated within the county, pursuant to the Michigan Solid Waste Management Act. As part of the St. Clair County plan, the county determined to exclude disposal within the County of non-hazardous solid waste originating outside the County. The State of Michigan approved the County plan, which therefore now forms a part of the Michigan Solid Waste Management Plan. The validity of the plan is now before the Court.

Pennsylvania and other states share the same solid waste disposal quandary facing Michigan. Federal statutory law entrusts the development of the solution to local solid waste management problems to the States, to be accomplished through comprehensive State regulation of every aspect of waste collection, transportation, processing and disposal, coupled with State regulation of environmental protection standards for the operation of solid waste facilities. Federal law requires States to implement a landfill permitting program consistent with new federal landfill standards or to cede the State program to EPA. Federal law also holds States and their municipalities jointly and severally liable for remediation of failed landfills of the past. States must pervasively regulate every aspect of solid waste management through comprehensive solid waste planning.

The States have enacted and implemented comprehensive State solid waste management laws within the express mandates of the federal solid waste law, Resource Conservation and Recovery Act, 42 U.S. §6901 *et seq.* (RCRA), but remain thwarted by irreconcilable conflicting principles: the need to implement State controls and a judicially-protected interest of private waste companies to operate in a free market outside of State control. The two systems cannot coexist.

The effect of this Court's decision in *Philadelphia v. New Jersey*, 437 U.S. 617 (1978) has been to hinder States in formulating waste plans because the waste flow is unpredictable and uncontrollable. If new landfills are sited, no community can be assured of reaping the benefit of its troubles in reducing the flow of its own waste. The progeny of *Philadelphia v. New Jersey* have impeded the intent of the federal and state solid waste planning program under RCRA. This result stems from two sources: an initial misperception that solid waste planning expressly pursuant to the federal RCRA policy is an *economic measure* rather than an *environmental protection measure* promoted by Congress, and the heightened scrutiny applied by Courts to State solid waste laws.

Where States have enacted and implemented solid waste managements plans pursuant to RCRA, States require the authority to implement their plans pursuant to State laws. Pennsylvania, therefore, seeks this Court's clarification of the authority of any State to implement a comprehensive solid waste management plan enacted pursuant to RCRA.

SUMMARY OF ARGUMENT

The Court should revisit its decision in *Philadelphia v. New Jersey*, 437 U.S. 617 (1978) and affirm the judgment of the Court of Appeals for two reasons. First, the Resource Conservation and Recovery Act of 1976 (RCRA), expresses the Congressional intent that states develop comprehensive plans for the management of solid waste within their borders. If the plans envisioned by RCRA are to be meaningful, Congress must have intended that States have the authority to regulate the importation of solid waste from other states. Second, under traditional "dormant" Commerce Clause analysis, state laws which regulate waste to protect the environment and the health and safety of citizens ought to be analyzed differently from measures which further economic interests. Unless they are proven to be a pretext for economic protectionist regulation, environmental laws should be upheld if they do not substantially and needlessly burden interstate commerce. The Michigan law here challenged does not.

ARGUMENT

A. The Resource Conservation And Recovery Act Was Intended To Authorize State Regulation Of The Influx Of Solid Waste.

The Michigan law here challenged is precisely the sort of plan which Congress must have intended to permit by enacting the Resource Conservation and Recovery Act of 1976 ("RCRA"). The law thus survives the Commerce Clause attack mounted by petitioner. Simply stated, RCRA instructs the states to undertake comprehensive solid waste planning for non-hazardous wastes, and to implement those plans under state law according to local needs. The framework of RCRA envisions that the state will exercise broad discretion in fashioning plans to fit local needs. Although the Court in *Philadelphia v. New Jersey*[1] did not discuss RCRA in terms of authorizing what the Commerce Clause would otherwise forbid, it is clear that the Act must mean that states have the authority to implement waste management plans of sufficient breadth to regulate the influx of solid waste into their borders.[2]

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[1] The City of Philadelphia majority held that RCRA does not *preempt* state planning. The majority, however, did not address the issue of whether the validity of the State action was buttressed by *consistency* with federal policies under RCRA. 437 U.S. at 620 n.4. The dissenting opinion comments that "Congress specifically recognized the substantial dangers to the environment and public health that are posed by current methods of disposing of solid waste in the Resource Conservation and Recovery Act of 1976, 90 Stat. 2795. As the Court recognizes, ante, n. 4, the laws under challenge here 'can be enforced consistently with the program goals and the respective federal-state roles intended by Congress when it enacted' this and other legislation and are thus not preempted by any federal statutes." City of Philadelphia, at 629 n.1 (Dissenting Opinion of Rehnquist, J.).

[2] "Nothing in [Subchapter D] shall be construed to prevent or affect any activities respecting solid waste planning or management which are carried out by State, regional, or local authorities unless such activities are inconsistent with a State plan approved by the [EPA] Administrator." 42 U.S.C. §6947(c).

1. This Court has recognized that Congress may exercise its affirmative grant of power under the Commerce Clause by "'[r]edefin[ing] the distribution of power over interstate commerce' by 'permitting the states to regulate commerce in a manner which would not otherwise be permissible'." *South-Central Timber Development, Inc. v. Wunnicke*, 467 U.S. 82, 87-88 (1984); *Maine v. Taylor*, 477 U.S. 131, 139 (1986). The Court in *Wyoming v. Oklahoma* ___ U.S. ___, 112 S.Ct. 789, 802 (1992) most recently said that what would otherwise be viewed as an impermissible discrimination against interstate commerce could be valid if authorized by the "unambiguous intent" of Congress expressed in a federal statute. *Id.* In *Wyoming*, the Court found that the "saving clause" of the Federal Power Act, 16 U.S.C. §791a *et seq.*, which reserved to the States the regulation of local retail electric rates, was not a sufficient indicator of Congressional intent to permit an Oklahoma statute having a discriminatory impact on the movement of Wyoming coal in interstate commerce.[3]

RCRA, however, goes far beyond the bare language of the savings clause analyzed by the Court in *Wyoming*. Its language and implementing guidelines evince a clear intent that states be encouraged to exercise broad discretion in developing regional waste management plans within federal guidelines. For such plans to be workable, Congress must have meant local waste management regions, such as states or counties, to have the authority to regulate or exclude waste from other states.

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[3] The "savings clause" states that

> The provisions of this subchapter shall apply to the transmission of electric energy in interstate commerce and to the sale of electric energy at wholesale in interstate commerce, but except as provided in paragraph (2) shall not apply to any other sale of electric energy or deprive a State or State commission of its lawful authority now exercised over the exportation of hydroelectric energy which is transmitted across a State line." 16 U.S.C. § 824(b)(1).

2. In enacting RCRA, Congress specifically acknowledged that, while problems of waste disposal have become national in scope "the collection and disposal of solid wastes should continue to be primarily a function of State, regional, and local agencies." 42 U.S.C. § 6901(a)(4).[4] The purpose of Subtitle D of the Act was to authorize states to develop waste management plans within federal guidelines.[5] RCRA requirements for state plans are set forth at 42 U.S.C. §6942. The statute directs the Environmental Protection Agency to establish "guidelines for identification of regions." 42 U.S.C. §6942a. "Such guidelines shall consider -- (1) the size and location of areas which should be included, (2) the volume of solid waste which should be included, and (3) the available means of coordinating regional planning with other related regional planning and for coordination of such regional planning into the State plan. *Id.*[6]

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[4] This section of the statute is consistent with the preamble of the EPA municipal waste landfill regulations:

> The actual planning and direct implementation of solid waste programs under Subtitle D, however, remain largely State and local functions, and the act authorizes States to devise programs to deal with State-specific conditions and needs.

56 Fed. Reg. 50979 (October 9, 1991).

[5] The original House Report states: It is the committee's intent that the federal government will provide the technical assistance necessary for the states, in cooperation with *their own local governments*, to develop an adequate regional system and the ability to implement such a system for the disposal of waste, *without the federal government becoming additionally involved in the affairs of state or local government*. It is the responsibility of the state and local government regional authorities to decide which discarded material functions will be state or regional agency or local responsibilities. H.R. Rep. No. 94-1491, 94th Cong., 2nd Sess. reprinted in 1976 U.S. Code Cong. & Ad. News 6238, 6278 (emphasis added).

[6] The guidelines for state planning were issued in 1979 and appear at 40 C.F.R. Part 256.

Congress directed EPA to establish State planning guidelines that consider numerous local conditions:

> (1) the varying regional, geologic, hydrologic, climatic, and other circumstances under which different solid waste practices are required in order to insure the reasonable protection of the quality of the ground and surface waters from leachate contamination, the reasonable protection of the quality of surface waters from surface runoff contamination, and the reasonable protection of ambient air quality;
> (2) characteristics and conditions of collection, storage, processing and disposal methods, techniques and practices, and location of facilities where such operating methods, techniques, and practices are conducted, taking into account the nature of the material to be disposed; (. . .)
> (4) population density, distribution and projected growth;
> (5) geographic, geologic, climatic, and hydrologic characteristics; (. . .)
> (8) the constituents and generation rates of waste;
> (9) the political, economic, organizational, financial and management problems affecting comprehensive solid waste management; (. . .)

42 U.S.C. §6942(c).

Thus, RCRA provides detailed guidelines for the development of state waste management plans which take into account extensive and detailed local factors. Given that Congress recognized that such planning is a matter of local concern, and the detail with which the EPA specified the many items to be considered in developing a plan, RCRA must also have intended that states be permitted to regulate flow into the state for which the plan was developed. Otherwise, any state plan developed in accordance

with RCRA would be of little value. A plan which permissibly projects and plans for waste management within the state for a given period of time would be undone as it could not account for out of state factors which could result in unforeseen influxes of waste. For example, a planning region that generates 500 tons per day of solid waste may plan to handle 500 tons or it may choose to plan to handle 1000 or 5000 tons per day within the region; but it simply cannot "plan" to handle an infinite or unknown quantity. The daily capacity of necessary waste processing facilities and disposal facilities cannot be estimated unless there are defined parameters. Similarly, the lifespan of a landfill measured in thousands of cubic yards of airspace cannot be estimated unless the daily intake at the facility is known. Future capacity at the landfill cannot be assured unless a daily limit is set. Further, a regional plan which sets a limit on total disposal capacity, with no ability to determine the sources of the waste, cannot assure the capacity to actually be available for the planning region's use. Finally, if a landfill is allowed to spread over unlimited acres, then the community cannot rationally use its traditional land-use and zoning controls to balance the competing local needs for available land. RCRA encourages states to develop internal plans for solid waste management and cannot have intended this result.

A State's regional planning areas or counties and the composite state plan may thus allow for (or restrict) waste from other areas outside of the planning region as a necessary corollary of the planning process, and as intended by Congress.[7] The requirement

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[7] RCRA provides that States may elect to establish interstate regional planning areas. "In the case of any region which, pursuant to the guidelines published by the Administrator under section 6942(a) of this title (relating to indentification of regions), would be located in two or more States, the Governors of the respective States, after consultation with local elected officials, shall consult, cooperate, and enter into agreements identifying the boundaries of such region pursuant to subsection (a) of this section." 42 U.S.C. §6946(c)(1). The EPA guidelines read "The State plan shall provide for coordination, *where practicable*, with solid waste management planning in neighboring States. 40 C.F.R. §256.50(m). *See also* 42 U.S.C. §6904.

of planning parameters does not, of course, require that each planning region set a limit of zero waste imports from other regions; but some limit must be set, and the size of that limit is determined by the local situation. *A fortiori*, if any limit on imported waste entering the region may legally be established, a limit of zero imports is also permissible.

B. A State Law Which Regulates Solid Waste Flow Is Not An Economic Regulation And Should Be Afforded Substantial Deference.

The Court should revisit and overrule *Philadelphia v. New Jersey* because the decision effectively treats the regulation of solid waste flow into a state as a form of economic regulation. The Court reached this result by focussing on the economic burdens imposed upon *other* states by New Jersey's refusal to accept their waste. The proper analysis rather should focus on whether the state law is in fact a measure designed to protect the state's environment and the health and safety of its citizens, both of which are areas that have been recognized by the Court and Congress as being historically within the purview of the states. If it is, and not a mere pretext for economic control, then the regulation is something quite different from the economic protectionism proscribed by the "dormant" Commerce Clause. The state regulation in such cases should only be overturned if it substantially and needlessly burdens interstate commerce.

1. As opposed to economic regulation, state regulation of the collection and disposal of solid waste is based in concerns for the protection of public health and the environment. The State, as sovereign, has a legitimate and historically recognized power to protect both. The Court has long recognized and accorded deference to the reserved sovereign powers of the States to protect, defend and conserve the physical environment of the State itself. At the start of this century, Justice Holmes explained the nature of the sovereign police power of the State to protect the environment thus:

> This is a suit by a State for an injury to it in its capacity of quasi-sovereign. In that capacity the State has an interest independent of and behind the titles of its citizens, in all the earth and air within its domain. It has the last word as to whether its mountains shall be stripped of their forests and its inhabitants shall breathe pure air. (. . .) It is a fair and reasonable demand on the part of a sovereign that the air over its territory should not be polluted, (. . .) that the forests on its mountains (. . .) should not be further destroyed or threatened by the act of persons beyond its control, that the crops and orchards on its hill should not be endangered from the same source.

Georgia v. Tennessee Copper Co., 206 U.S. 230, 237, 238 (1906). See also, *Manigault v. Springs*, 199 U.S. 473, 478 (1905).

The interest of the State as sovereign to protect its environment from despoliation is no less important today. Just ten years ago this Court recognized the "substantial state interest in promoting conservation of energy and other natural resources and easing solid waste disposal problems." *Minnesota v. Clover Leaf Creamery Co.*, 449 U.S. 471, 473 (1981); *Maine v. Taylor*, 477 U.S. 131 (1986). See also, *Sporhase ex rel. Douglas v. Nebraska*, 458 U.S. 941, 954, (1982) (The preservation and conservation of groundwater is "unquestionably legitimate and highly important"); *Breard v. Alexandria*, 341 U.S. 622, 640 (1951) ("Where there is a reasonable basis for legislation to protect the social, as distinguished from economic, welfare of a community, it is not for this Court because of the Commerce Clause to deny the exercise locally of the sovereign power of Louisiana.") This plenary power was not withdrawn by the Commerce Clause, but only circumscribed by considerations of our federal economic system. As this Court stated in *Huron Portland Cement Co. v. City of Detroit, Michigan* 362 U.S. 440 (1960):

> In determining whether the state has imposed an undue burden on interstate commerce, it must be borne in mind that the Constitution when, 'conferring upon Congress the regulation of commerce, . . . never intended to cut the States off from legislating on all subjects relating to the health, life, and safety of their citizens, though the legislation might indirectly affect the commerce of the county.'

362 U.S. at 443 (1960).

A Commerce Clause analysis of a state police power action should start from the recognition that a State has both an obligation and a right to act to protect its environment and its citizens. The Court has previously held that the States' exercise of police power in areas such as transportation safety, quarantines, and rivers and harbors are to be accorded great deference.[8] This deference should be extended to state action in the area of solid waste based upon the important State interests involved, the historically local nature of the interests, and (in this case) the continued acknowledgment by Congress in RCRA that state action is the appropriate method for addressing the problems.

Dissenting in *Philadelphia v. New Jersey*, Chief Justice Rehnquist recognized that laws regulating the flow of solid waste should be viewed the same way as other health and safety measures:

> Even if the Court is correct in its characterization of New Jersey's concerns, I do not see why a state may ban the

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[8] "The regulation of highways 'is akin to quarantine measures, game laws, and similar local regulations or rivers, harbors, piers, and clocks, with respect to which the State has exceptional scope for the exercise of its regulatory power, and which, congress not acting, have been sustained even though they materially interfere with interstate commerce.'" Bibb v. Navajo Freight Lines, Inc., 359 U.S. 520, 524, (1959) quoting Southern Pacific Co. v. State of Arizona, 325 U.S. 761, 783 (1945).

> importation of items whose movement risks contagion, but cannot ban the importation of items which, although they may be transported into the state without undue hazard, will then simply pile up in an ever increasing danger to the public's health and safety. The Commerce Clause was not drawn with a view to having the validity of state laws turn on such pointless distinctions.

437 U.S. at 632-33.

Thus, if a state law truly addresses environmental, not economic concerns, it should be judged against a more lenient standard.

2. The distinction between economic and public health protection in the area of solid waste regulation is crucial to an understanding of the present case. Michigan does not provide an economic advantage to either its citizens or in-state companies by reducing the flow of out-of-state waste. The Petitioner is a landfill located in Michigan, complaining of a burden on its business interests in Michigan. This Court has noted that a negative economic effect on an *in-state* company is one hallmark of non-violation of the Commerce Clause. *Minnesota v. Clover Leaf*, 449 U.S. at 473 n. 17. Michigan's action does just that. In-state landfills are economically harmed by the statute while out-of-state landfills are free to absorb the additional waste and increase their profits. Further, restricting imported waste negatively affects the revenues of the State itself by reducing the volume, and thus, the tipping fees and taxes for in-state landfills to the financial detriment of municipalities, counties and the state. The only possible economic advantage to a State from reduced disposal volume is the savings to the State budget and State taxpayers from having to support fewer permit reviews and landfill inspections. Fort Gratiot Sanitary Landfill can identify no economic benefits to the citizens or businesses of Michigan from reduced waste flows, for there are none. The benefits are all non-economic: reduced air pollution, noise pollution, water pollution, traffic, odor, and

future risk to the groundwater resources that may be posed by the landfill during operation and long after its useful life is over.

Moreover, Michigan does not impose an economic burden on other States. No out-of-state companies are deprived of the opportunity to do business in solid waste. The only real burden placed upon other States is to assume the burden already shouldered by Michigan, the burden of adequately planning for the disposal of its own waste. That burden, ultimately, should be borne equally by all, and not foisted onto only those States that have a rational and timely program for siting and permitting facilities.

Therefore, state regulation of environmental protection must be distinguished from the line of cases considering mere economic regulation, such as *Pike v. Bruce Church, Inc.*, 397 U.S. 137 (1970) and *Hughes v. Oklahoma*, 441 U.S. 322 (1979). The Court itself recognized this distinction in *Pike* stating, "We are not, then, dealing here with 'state legislation in the field of safety where the propriety of local regulation has long been recognized' or with an Act designed to protect consumers in Arizona from contaminated or unfit goods." *Southern Pacific Co. v. Arizona*, 325 U.S. 761 (1945). *See, also, Raymond Motor Transportation, Inc. v. Rice*, 434 U.S. 429 (1978); *Bibb v. Navajo Freight Lines, Inc.*, 359 U.S. 520 (1959). The *Pike* test, oft repeated, is inadequate to judge the present matter. In the area of State solid waste regulation, *Pike* balancing fails to adequately give deference to the historic and well-recognized State interests, coupled with express federal policy for state actions.

The *Hughes* test is also inappropriate for analyzing state solid waste regulation. In *Hughes*, the Court erected the highest test of strict scrutiny for review of state actions. Although that case essentially considered what the Court called an economic protection (rather than a natural resources protection), the *Hughes* heightened scrutiny test has repeatedly been applied to attack state environmental protection programs, and waste disposal programs in

particular. *See, e.g., DeVito Trucking v. Rhode Island Solid Waste Management Corp.*, 770 F.Supp. 775 (D.R.I. 1991).

Hughes requires a State to shoulder the burden of demonstrating that it has chosen the best, the wisest, the most carefully crafted "*least restrictive*" alternative available of all possible options that may occur to litigants or judges later, at their leisure. No higher test for the constitutionality of a state action could be devised, and it is certainly the wrong test in this case. The Court should not sit as a super-legislature to review the wisdom of state legislative decisions that flow from the core of state sovereign concerns such as environmental protection enactments.[9]

The *Hughes* strict scrutiny and the *Pike* balancing tests have dominated judicial review of waste disposal cases since *Philadelphia v. New Jersey*. Neither test is appropriate to the review of a comprehensive state solid waste management planning program to protect the environment and safeguard the public welfare of the sovereign State, enacted pursuant to a comprehensive federal law.

3. The pervasive and historic State regulation of solid waste should be treated differently from economic measures and should be accorded a presumption of validity. Deferential review of public health legislation is common in other areas of constitutional analysis unless expressly protected personal or political liberties are at stake. *United States v. Carolene Products*, 304 U.S. 144, 152 n. 4 (1938).

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[9] "These safety measures carry a strong presumption of validity when challenged in Court. If there are alternative ways of solving a problem, we do not sit to determine which of them is best suited to achieve a valid State objective. Policy decisions are for the state legislature, absent federal entry into the field." Bibb, 359 U.S. at 524.

The Court has traditionally manifested the presumption of validity through what it has termed "sensitive consideration" of the State's interest in comparison to the affects on commerce. "The purpose of the 'sensitive consideration' is to determine if the asserted safety justification, although rational, is merely a pretext for discrimination against interstate commerce through economic protectionism." *Kassel v. Consolidated Freightway Corp. of Delaware*, 450 U.S. 662, 692 (1981) (Rehnquist, C. J. dissent); *Bibb*, 359 U.S. 524. If the sensitive consideration shows no pretext, the presumption will be overcome only when the benefits are "slight or problematical." *Id.*

A presumption of validity appropriately focuses the analysis on the important State interest and places the burden on the person challenging the state action to show not only that interstate commerce is affected, but that it is *needlessly* obstructed. The Court expounded the correct standard for the review of a non-economic, police power action in *Maine v. Taylor*:

> As long as a State does not *needlessly* obstruct interstate trade to attempt to 'place itself in a position of *economic* isolation' it retains broad authority to protect the health and safety of its citizens and the integrity of its natural resources.

477 U.S. 131, 151, citing *Baldwin v. Seelig*, 294 U.S. 511 (1935) (emphasis added).

The presumption of validity should be even greater if there is an historic State interest involved. "[I]t also is true that the Court has been most reluctant to invalidate under the Commerce Clause 'state legislation in the field of safety where the propriety of local regulation has long been recognized.'" *Raymond*, 434 U.S. at 443 citing *Pike*, 397 U.S. at 143. The present case falls squarely within an area where the propriety of local police power regulation

has long been recognized.[10] As such, State efforts to control solid waste should be presumed valid and accorded great deference. Further, this deference should be greater where Congress has considered the matter of solid waste and has purposely left it to the States. As discussed above, RCRA evinces a federal policy of state action and control in the area of solid waste regulation.

An analysis of the local nature of a police power action and Congress' acquiescence to state action has been a factor in analyses of state action under Constitutional provisions. For example, *Huron Portland Cement* presented both a Supremacy Clause and Commerce Clause challenge to the city of Detroit's air quality requirements as they affected ships docked at Detroit harbor. In upholding Detroit's regulation of ship boiler firing, the Court found that Congress had not preempted the field of air quality protection and, indeed, had left air quality protection in large measure to the States. "Congressional recognition that the problem of air pollution is peculiarly a matter of State and local concern is manifest in this legislation." *Huron Portland Cement*, 362 U.S. at 446. *Accord, Parker v. Brown*, 317 U.S. 341, 362, 363 (1943).

This same consideration of Congress' determination to leave to state regulation areas that are historically of local interest should be included in a Commerce Clause analysis of the present case.[11] Such an approach recognizes that States do not act in a vacuum, but must take into account both federal action and inaction. In a matter of important state interest such as solid waste regulation,

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[10] *See*, California Reduction Company v. Sanitary Reduction Works of San Fransisco, 199 U.S. 306 (1905); Gardner v. Michigan, 199 U.S. 325 (1905) (Both cases upholding exclusive municipal franchises of solid waste disposal.)

[11] Chief Justice Rehnquist urged just such an approach in a dissent in Hughes v. Oklahoma, stating "Given the primacy of the local interest here, in the absence of conflicting federal regulation I would require one challenging a state conservation law on Commerce Clause grounds to establish a far greater burden on interstate commerce than is shown in this case. *Hughes*, 441 U.S. 343 fn. 6.

Congress' decision in RCRA to not preempt, but rather to urge comprehensive state solid waste planning of the kinds undertaken by Michigan, must be recognized. The articulated federal policy to foster State action regulating solid waste should be afforded great deference. *Huron Portland Cement*. The requirement should be placed on the challenger to show not just a burden on interstate commerce, but a *substantial* and *needless* burden. *Maine v. Taylor*. This burden has not been met in this case.

CONCLUSION

For the foregoing reasons, the judgment of the Court of Appeals should be affirmed.

Respectfully submitted,

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